

HOUSE BILL NO. 202

INTRODUCED BY K. WAGONER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PUBLIC OFFICERS AND EMPLOYEES; REQUIRING PUBLIC OFFICERS AND EMPLOYEES TO REPORT CERTAIN MATTERS OF PUBLIC CONCERN; CREATING THE OFFENSE OF PUBLIC OBSTRUCTION FOR A PERSON THAT SUPPRESSES A PUBLIC EMPLOYEE FROM COMMUNICATING CERTAIN MATTERS OF PUBLIC CONCERN WITH A LEGISLATOR; PROVIDING PENALTIES; AND AMENDING SECTION 2-2-102, MCA."

WHEREAS, every public officer or employee has a right to speak to any legislator regarding state business about which the public officer or employee has a concern, including alleged misconduct, fraud, waste, abuse, or other matters of public concern;

WHEREAS, every public employee reporting alleged misconduct, fraud, waste, abuse, or other matters of public concern has a right to do so without fear of reprisal.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Public obstruction. (1) A person who exercises supervision, management, or control over a public employee commits the offense of public obstruction if the person purposely or knowingly takes any action to impede a public employee from communicating in good faith with a legislator as defined in 5-7-102 about possible misconduct, fraud, waste, abuse, or other matters of public concern.

(2) A person convicted of the offense of public obstruction shall be fined not to exceed \$20,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) For the purposes of this section, "public employee" means any temporary or permanent employee of a local government or of the state as defined by [section 2] or a person under contract to a local government or to the state.

NEW SECTION. Section 2. Duty to report. (1) An officer or employee of a local government or of the state has an obligation to report alleged misconduct, fraud, waste, or abuse to the appropriate governmental body or employer.

(2) An officer or employee of a local government or of the state may not be penalized for violations of this section.

(3) For the purposes of this section, the following definitions apply:

(a) "Employee" includes any temporary or permanent employee or a person under contract to the state or a local government.

(b) "Local government" includes a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(c) "Officer" includes any elected or appointed official.

(d) "State" means the executive, judicial, and legislative branches of government.

Section 3. Section 2-2-102, MCA, is amended to read:

"2-2-102. Definitions. ~~As~~ Except as otherwise provided, as used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

1 (C) is not lavish or extravagant.

2 (4) "Local government" means a county, a consolidated government, an incorporated city or town, a
3 school district, or a special district.

4 (5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or
5 other action, including inaction, that involves the use of discretionary authority.

6 (6) "Private interest" means an interest held by an individual that is:

7 (a) an ownership interest in a business;

8 (b) a creditor interest in an insolvent business;

9 (c) an employment or prospective employment for which negotiations have begun;

10 (d) an ownership interest in real property;

11 (e) a loan or other debtor interest; or

12 (f) a directorship or officership in a business.

13 (7) "Public employee" means:

14 (a) any temporary or permanent employee of the state;

15 (b) any temporary or permanent employee of a local government;

16 (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with
17 rulemaking authority; and

18 (d) a person under contract to the state.

19 (8) (a) "Public officer" includes any state officer and any elected officer of a local government.

20 (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

21 (9) "Special district" means a unit of local government, authorized by law to perform a single function or
22 a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed
23 management districts, irrigation districts, fire districts, community college districts, hospital districts, sewer
24 districts, and transportation districts. The term also includes any district or other entity formed by interlocal
25 agreement.

26 (10) (a) "State agency" includes:

27 (i) the state;

28 (ii) the legislature and its committees;

29 (iii) all executive departments, boards, commissions, committees, bureaus, and offices;

30 (iv) the university system; and

1 (v) all independent commissions and other establishments of the state government.

2 (b) The term does not include the judicial branch.

3 (11) "State officer" includes all elected officers and directors of the executive branch of state government
4 as defined in 2-15-102."

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6 **NEW SECTION. Section 4. Codification instruction.** (1) [Section 1] is intended to be codified as an
7 integral part of Title 45, chapter 7, part 5, and the provisions of Title 45, chapter 7, part 5, apply to [section 1].

8 (2) [Section 2] is intended to be codified as an integral part of Title 2, chapter 2, part 1, and the provisions
9 of Title 2, chapter 2, part 1, apply to [section 2].

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